# INDEX


| | Page |
|---|---|
| Opinions below | 1 |
| Jurisdiction | 1 |
| Question presented | 2 |
| Statute and regulations involved | 2 |
| Statement | 2 |
| Specification of errors to be urged | 7 |
| Reasons for granting the writ | 7 |
| Conclusion | 17 |
| Appendix | 18 |


## CITATIONS

Cases:


| | |
|---|---|
| *Appel* v. *Smith*, 161 F. 2d 121 | 16 |
| *Argo* v. *Commissioner*, 150 F. 2d 67, certiorari denied, 326 U. S. 762 | 16 |
| *Belcher* v. *Commissioner*, 162 F. 2d 974, certiorari denied, 332 U. S. 824 | 15-16 |
| *Benson* v. *Commissioner*, 161 F. 2d 821 | 16 |
| *Blalock* v. *Allen*, 151 F. 2d 927 | 16 |
| *Bradshaw* v. *Commissioner*, 150 F. 2d 918 | 16 |
| *Camfield* v. *Commissioner*, 154 F. 2d 1016 | 16 |
| *Canfield* v. *Commissioner*, decided July 12, 1948 | 8 |
| *Commissioner* v. *Sunnen*, 333 U. S. 591 | 10 |
| *Commissioner* v. *Tower*, 327 U. S. 280 | 2, 7, 9, 10, 12, 14, 15, 16 |
| *Davis* v. *Commissioner*, 161 F. 2d 361 | 15 |
| *Dawes* v. *Allen*, 157 F. 2d 518 | 16 |
| *Dawson* v. *Commissioner*, 163 F. 2d 664 | 15-16 |
| *DeKorse* v. *Commissioner*, 158 F. 2d 801 | 16 |
| *Doll* v. *Commissioner*, 149 F. 2d 239, certiorari denied, 326 U. S. 725 | 16 |
| *Durwood* v. *Commissioner*, 159 F. 2d 400 | 8 |
| *Earp* v. *Jones*, 131 F. 2d 292, certiorari denied, 318 U. S. 764 | 16 |
| *Economos* v. *Commissioner*, 167 F. 2d 165 | 15 |
| *Eisenberg* v. *Commissioner*, 161 F. 2d 506, certiorari denied, 332 U. S. 767 | 15 |
| *Epps* v. *Commissioner*, 164 F. 2d 482 | 16 |
| *Ewing* v. *Commissioner*, 157 F. 2d 679 | 16 |
| *Fletcher* v. *Commissioner*, 164 F. 2d 182, certiorari denied, 333 U. S. 855 | 15 |
| *Grant* v. *Commissioner*, 150 F. 2d 915 | 16 |
| *Greenberg* v. *Commissioner*, 158 F. 2d 800 | 16 |

Cases—Continued


| | Page |
|---|---|
| *Hash* v. *Commissioner*, 152 F. 2d 722, certiorari denied, 328 U. S. 838, rehearing denied, 328 U. S. 879 | 15 |
| *Helvering* v. *Clifford*, 309 U. S. 331 | 9, 14 |
| *Helvering* v. *Horst*, 311 U. S. 112 | 9 |
| *Hougland* v. *Commissioner*, 166 F. 2d 815, certiorari denied, 334 U. S. 846 | 15 |
| *Lawton* v. *Commissioner*, 164 F. 2d 380 | 8 |
| *Livie* v. *Commissioner*, 155 F. 2d 728 | 16 |
| *Lorenz* v. *Commissioner*, 148 F. 2d 527, certiorari denied, 327 U. S. 786 | 16 |
| *Losh* v. *Commissioner*, 145 F. 2d 456 | 16 |
| *Lowry* v. *Commissioner*, 154 F. 2d 448, certiorari denied, 329 U. S. 725 | 16 |
| *Lucas* v. *Earl*, 281 U. S. 111 | 9 |
| *Lusthaus* v. *Commissioner*, 149 F. 2d 232 | 15 |
| *Lusthaus* v. *Commissioner*, 327 U. S. 293 | 2, 7, 9, 10, 11, 12, 14, 15, 16 |
| *MacDonald* v. *Commissioner*, 165 F. 2d 213 | 16 |
| *Mauldin* v. *Commissioner*, 155 F. 2d 666 | 15 |
| *Mead* v. *Commissioner*, 131 F. 2d 323, certiorari denied, 318 U. S. 777 | 16 |
| *Miller* v. *Commissioner*, 150 F. 2d 823 | 15 |
| *Morton* v. *Thomas*, 158 F. 2d 574, certiorari denied, 330 U. S. 834 | 16 |
| *Nordling* v. *Commissioner*, 166 F. 2d 703 | 16 |
| *Quon* v. *Commissioner*, 165 F. 2d 215, certiorari denied, 334 U. S. 845 | 16 |
| *Scherf* v. *Commissioner*, 161 F. 2d 495, certiorari denied, 332 U. S. 810 | 15 |
| *Schreiber* v. *Commissioner*, 160 F. 2d 108 | 16 |
| *Seibert* v. *Commissioner*, 156 F. 2d 227 | 15 |
| *Seifert* v. *Commissioner*, 157 F. 2d 719 | 15 |
| *Sewell* v. *Commissioner*, 151 F. 2d 765, certiorari denied, 327 U. S. 783 | 16 |
| *Sewell's Estate* v. *Commissioner*, 151 F. 2d 806, certiorari denied, 327 U. S. 805 | 16 |
| *Simmons* v. *Commissioner*, 164 F. 2d 220 | 8 |
| *Singletary* v. *Commissioner*, 155 F. 2d 207 | 8 |
| *Supornick* v. *Commissioner*, 150 F. 2d 110 | 16 |
| *Sweigard* v. *Commissioner*, 149 F. 2d 646 | 15 |
| *Thorrez* v. *Commissioner*, 155 F. 2d 791 | 16 |
| *Tinkoff* v. *Commissioner*, 120 F. 2d 564 | 16 |
| *Tyson* v. *Commissioner*, 146 F. 2d 50 | 16 |
| *Waldburger* v. *Helvering*, 136 F. 2d 598 | 15 |
| *Walker* v. *Commissioner*, 160 F. 2d 313 | 15 |
| *Weinstein* v. *Commissioner*, 166 F. 2d 81 | 16 |
| *Weizer* v. *Commissioner*, 165 F. 2d 772 | 8 |
| *Wilson* v. *Commissioner*, 161 F. 2d 556, certiorari denied, 332 U. S. 769 | 15 |
| *Wilson* v. *Commissioner*, 161 F. 2d 661 | 8 |
| *Woosley* v. *Commissioner*, 168 F. 2d 330 | 8 |

Page

tes:

Internal Revenue Code:

Sec. 11 (26 U. S. C. 1946 ed., Sec. 11) ..... 18

Sec. 22 (26 U. S. C. 1946 ed., Sec. 22) ..... 18

Sec. 181 (26 U. S. C. 1946 ed., Sec. 181) ..... 18

Sec. 182 (26 U. S. C. 1946 ed., Sec. 182) ..... 18

Sec. 3797 (26 U. S. C. 1946 ed., Sec. 3797) ..... 19

Miscellaneous:

Treasury Regulations 103, Sec. 19.22 (a)-1 ..... 19

# In the Supreme Court of the United States

OCTOBER TERM, 1948

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No. 313

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

*v.*

W. O. CULBERTSON, SR., AND GLADYS CULBERTSON

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*PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

---

The Solicitor General, on behalf of the Commissioner of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the Fifth Circuit, entered June 30, 1948, reversing the judgment of the Tax Court.

## OPINIONS BELOW

The memorandum opinion of the Tax Court (R. 31-56) is not reported. The opinion of the Court of Appeals (R. 181-188) is reported in 168 F. 2d 979.

## JURISDICTION

The judgment of the Court of Appeals was entered on June 30, 1948 (R. 188). The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

## QUESTION PRESENTED

Whether the court below departed from the decisions of this Court in *Commissioner* v. *Tower*, 327 U.S. 280, and *Lusthaus* v. *Commissioner*, 327 U.S. 293, in reversing the Tax Court's decision that business income attributed by taxpayer [1] to his four sons as "partners" was includible in taxpayer's gross income as defined in Section 22 (a) of the Internal Revenue Code.

## STATUTE AND REGULATIONS INVOLVED

These are set forth in the Appendix, *infra*, pp. 18-19.

## STATEMENT

The material facts as found by the Tax Court (R. 32-56) may be summarized as follows:

Prior to the taxable years (1940 and 1941), taxpayer and one Coon carried on a cattle raising business as equal partners, under the firm name of Coon and Culbertson. Taxpayer had four sons and a daughter—W. O., Jr., Richard, Joe, Eugene, and Fannie—whose respective ages at the beginning of 1940 were 24, 22, 18, 16, and 14. W. O., Jr., finished college in 1938 and became foreman of the ranch for Coon and Culbertson, in which capacity he received $100 per month and board. Richard finished college in 1940 and went directly into the

[1] The term "taxpayer", whenever appearing herein, refers to respondent W. O. Culbertson, Sr. His wife, Gladys Culbertson, is a party only because the income tax returns for the taxable years involved were filed on the community property basis. She filed a separate petition to the Tax Court, and the cases were consolidated for hearing and disposition below. (R. 31, 59-60.)

army. Joe was attending college in 1940, interrupted his studies to enter the army, and at the time of the hearing below had returned to college to finish his studies. Eugene was attending a business school. Fannie was an assistant in a dry goods store. Ever since the boys were about twelve years old they had done odd jobs on the ranch during summer vacations and week ends. (R. 32-33, 44.)

In the spring of 1939, taxpayer and Coon decided to dissolve their partnership and sell the herd, and by October of that year the herd had been reduced to about 1,500 head of cattle. Taxpayer then offered to purchase the remainder of the herd for about $65 per head, and Coon accepted his offer provided taxpayer would sell an undivided one-half interest to his sons at the same price. On November 4, 1939, taxpayer purchased the cattle then owned by the business for $99,440. Two days later, he executed a bill of sale to his four sons, covering an undivided one-half interest in the same cattle, in exchange for a one-year note from the sons for $49,720. (R. 33-34.) A bank account was then opened in the name of "W. O. Culbertson and Sons" (R. 35), and, shortly thereafter, taxpayer sought to borrow funds on behalf of this new "partnership" from the National Finance Credit Corporation. A representative of that company advised taxpayer to have appropriate documents prepared authorizing him to act for his minor sons. Taxpayer thereupon explained the

new "partnership" to his attorney, who prepared a document (dated December 8, 1939, and to become effective as of January 1, 1940) conveying an undivided one-eighth interest in the business assets to each of his four sons. Taxpayer read, understood, and signed this document, and its pertinent portions are quoted in the Tax Court's findings (R. 36-40.) It recited that taxpayer and his wife were "the owners" of the business assets and wished to create a "limited partnership" with the sons "as and when they arrive at a proper age to engage in business"; and provided that the transfer was subject to certain "conditions", including the condition that the "grantors" reserved the right "to manage and control the property herein conveyed, without restrictions and in such manner as may by them be deemed proper" until the youngest son reached 21 years of age (R. 36-38). A new note dated January 1, 1940, in the amount of $57,674.80, was given to taxpayer by his sons for their one-half undivided interest in the entire business, in lieu of the $49,720 note they had previously given him for a one-half interest in the cattle alone (R. 34). Thereafter, taxpayer executed another document, dated December 31, 1940, purporting to convey an additional undivided one-eighth interest in the business assets to his daughter Fannie, subject to the same conditions contained in the prior conveyance to the sons. The daughter gave him a note for $13,488.27 for her interest. (R. 40-42.) On or before June 10, 1941, the new "partnership" borrowed $60,000 from

the National Finance Credit Corporation, which was turned over to taxpayer. The loan was handled exclusively by taxpayer, and was repaid with proceeds of the business. (R. 42.)

The notes given to taxpayer by his children were never paid by them. The daughter's note was satisfied by a credit of the full amount as a gift to her from taxpayer (R. 42). As for the sons' note, $30,000 of it was paid with the funds borrowed by taxpayer on behalf of the partnership, $21,744.80 was credited as gifts from taxpayer to the sons, and the balance ($5,930) was credited as an overcharge (R. 34-35, 42, 48). Taxpayer did not intend that the notes be paid, and the children contributed no capital of their own to the business (R. 47-49). No capital accounts for the children were set up on the books of the business (R. 44, 53).

The children contributed no vital additional services after formation of the alleged partnership (R. 49-50, 54). The eldest son, W. O., Jr., continued to serve as foreman of the ranch under the same arrangement as previously existed when the business was owned by Coon and Culbertson (R. 35). He was the only child who was rendering any kind of services at the time of the hearing below (R. 44), and he was paid both before and after formation of the alleged partnership at about the same rate for about the same services (R. 33, 50). Joe and Eugene were still pursuing their studies, while Richard went directly from college into the

army; they were paid wages for their services during summer months (R. 44). Taxpayer ran the office of the business and continued as before to manage the financing, sales and purchases, visiting the ranch about once a month (R. 44, 54). He withdrew no salary for his services (R. 44).

Partnership returns filed for the years 1940 and 1941 reported net income of $19,064.21 for 1940 and $63,801.33 for 1941. The 1940 net income was declared distributable to taxpayer and his sons as partners; the 1941 net income was declared distributable to taxpayer, his daughter, and his sons as partners. The 1940 return stated that the partnership was formed on January 1, 1940, while the 1941 return stated that the partnership was formed on January 1, 1941 (R. 42-43). In 1943, after a revenue agent questioned the returns, taxpayer, upon the advice of his accountant and his attorney, caused a petition to be filed in a Texas district court in the name of his sons and daughter, against himself and his wife as defendants, for a declaratory judgment that the children were partners. Except for his attorney and the court officials, taxpayer was the only person present at the hearing. The state court entered a decree to the effect that taxpayer's conveyances of partnership interests to his children, on December 8, 1939, were void, but that the children were valid partners (R. 44-45).

The Commissioner determined that taxpayer's children were not his partners for federal income

tax purposes, and that the shares of the 1940 and 1941 business income attributed to them were includible in his gross income (R. 23-27). At the hearing before the Tax Court, taxpayer conceded the correctness of the Commissioner's determination as to the daughter (R. 115, 123, 126). The Tax Court, relying on *Commissioner* v. *Tower*, 327 U. S. 280, and *Lusthaus* v. *Commissioner*, 327 U. S. 293, held that the sons did not become real partners and sustained the Commissioner's determination that the shares of the business income ascribed to and reported by them were likewise taxable to taxpayer (R. 46-56). The Court of Appeals reversed. (R. 188).

**SPECIFICATION OF ERRORS TO BE URGED**

The Court of Appeals erred:

(1) In holding, contrary to the decisions of this Court in *Commissioner* v. *Tower*, 327 U. S. 280, and *Lusthaus* v. *Commissioner*, 327 U. S. 293, that the claimed partnership between taxpayer and his sons was entitled to recognition for federal income tax purposes irrespective of whether the sons had contributed capital of their own or vital additional services to the business.

(2) In reversing the judgment of the Tax Court.

**REASONS FOR GRANTING THE WRIT**

1. This case reflects an alarming tendency by some of the Courts of Appeals to circumvent the decisions of this Court in *Commissioner* v. *Tower*, 327 U. S. 280, and *Lusthaus* v. *Commissioner*, 327

U. S. 293. Since those cases were handed down, the Tax Court has consistently applied the criteria there prescribed in passing upon the reality of claimed family partnerships for federal income tax purposes. In keeping with this Court's admonition that each case in this field must turn on its own facts, the Commissioner has not appealed from Tax Court decisions adverse to him; on the other hand, when the Commissioner's determination has been sustained, the taxpayers, in numerous instances, have sought further review. The case at hand represents the latest example in a series of recent cases in which the Tax Court has followed the *Tower* and *Lusthaus* principles, only to have its decision reversed on the taxpayer's appeal.[2] On each prior occasion, the Government has refrained from requesting certiorari, in the expectation that the decision would not serve as an invitation to repeated deviations by the Courts of Appeals from the controlling principles enunciated by this Court. It is now apparent from the decision of the court below that, far from abating, the trend illustrated by these decisions has accelerated to the point of flagrant disregard of those principles. A great many family partnership

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[2] *Lawton* v. *Commissioner*, 164 F. 2d 380 (C.C.A. 6th); *Weizer* v. *Commissioner*, 165 F. 2d 772 (C.C.A. 6th); *Woosley* v. *Commissioner*, 168 F. 2d 330 (C.C.A. 6th); *Canfield* v. *Commissioner*, (C.C.A. 6th), decided July 12, 1948 (1948 C.C.H., par. 9337); *Simmons* v. *Commissioner*, 164 F. 2d 220 (C.C.A. 5th); *Singletary* v. *Commissioner*, 155 F. 2d 207 (C.C.A. 5th); *Wilson* v. *Commissioner*, 161 F. 2d 661 (C.C.A. 7th); *Durwood* v. *Commissioner*, 159 F. 2d 400 (C.C.A. 8th).

cases are pending, and unless the trend is halted, serious loss of revenue will ensue. The orderly administration of the tax laws in this field as in others is dependent upon faithful adherence by the several Courts of Appeals, no less than by the Tax Court, to the authoritative rulings of this Court. Once an important question has been resolved by this Court, the failure of some of the lower courts to abide by the result not only produces inequality of treatment among taxpayers, but engenders disrespect for the authority of this tribunal.

2. In the *Tower* and *Lusthaus* cases, this Court applied the *Earl-Clifford-Horst* line of cases[3] to partnerships predicated upon intra-family transfers of business assets. In the *Tower* case, a gift by a husband to his wife of a portion of his business capital was held ineffectual to render the wife his partner for tax purposes, notwithstanding the validity of the arrangement under state law and as to third parties; unless the donee-partner "invests capital originating with her or substantially contributes to the control and management of the business, or otherwise performs vital additional services, or does all of these things" (327 U. S. at p. 290), the Tax Court is fully justified in concluding that the claimed partnership lacks economic reality and that, accordingly, the business income is taxable in its entirety to the donor-husband. In the *Lusthaus* case, this Court held that no different

[3] *Lucas* v. *Earl*, 281 U. S. 111; *Helvering* v. *Clifford*, 309 U. S. 331; *Helvering* v. *Horst*, 311 U. S. 112.

result can obtain where the husband purports to sell some of his business assets to the wife, the consideration being paid partly with funds donated by him to her and partly out of the share of the business income ascribed to her as a partner. The principles underlying these decisions were reaffirmed in *Commissioner* v. *Sunnen*, 333 U. S. 591.

Applying the criteria laid down in the *Tower* and *Lusthaus* cases, the Tax Court concluded (R. 47-54) that taxpayer's four sons contributed no capital of their own nor any vital additional services (managerial or otherwise) to the business, and hence did not become his partners for tax purposes. The undisputed evidentiary facts not only support but demand that inference: Taxpayer purchased and paid for the interest of his former partner (Coon), and then purported to sell an interest to his sons in exchange for a note which he never expected or intended them to pay; the note was satisfied partly by direct gifts from taxpayer, partly with business funds borrowed by him, and partly by an overcharge credit (R. 34-40, 42, 48).[4] As for the services of the sons, two of them (Eugene and Joe, age 16 and 18) were still attending school at the time of their admission as partners, while another (Richard, age 22) was

[4] The sons acquired their interests from taxpayer in substantially the same manner as did his daughter (R. 40-42), to whom a share of the business income was also ascribed (R. 43) but who concededly (R. 115, 123, 126) did not become a partner for tax purposes.

just finishing college and went directly into the army; they had performed odd jobs for the business during summer vacations and week-ends, for which they were compensated, and they rendered no additional services after formation of the alleged partnership (R. 32-33, 44, 49-50). The eldest son (W. O., Jr., age 24) had become foreman of the ranch two years before his admission as a partner, and thereafter he continued to serve in the same capacity and for the same compensation; he was the only son who was performing any kind of services at the time of the Tax Court hearing (R. 33, 35, 44, 50). Taxpayer continued as before to run the office and to manage the financing, sales, and purchases (R. 44, 54). In all essential features, this case bears a marked similarity to the *Lusthaus* case, where the taxpayer "sold" an interest in his business to his spouse who thereafter continued to perform the same kind of services she had been performing. Here, as in that case (p. 297), "the partnership arrangements were merely superficial, and did not result in changing the [taxpayer's] economic interest in the business."

In reversing the Tax Court, the court below relied upon a conglomeration of reasons which, viewed singly or collectively, evince a complete misconception of the guiding principles:

(a) Insofar as its decision rests on the theory (R. 186) that a family partnership is "equally effective whether the capital and the services are presently contributed and rendered or are later to

be contributed or to be rendered", the court adopted a test repugnant to that prescribed in *Tower* and *Lusthaus*. The "basic question" is who "earned" the business income (*Commissioner* v. *Tower*, pp. 283, 289), not who expects to earn it. The creative source of the business income earned during the taxable years (taxpayer's capital and services) obviously did not change merely because the sons may have hoped to contribute capital or services in the future.[5] To hold that a taxpayer may split his business income with his children on the basis of a possibility that they might some day become his partners is to propound novel and dangerous concepts of tax liability.

(b) Insofar as its decision is grounded on the theory (R. 185, 187) that the original bill of sale from taxpayer to his sons was a "legal and binding document" under which the sons "owned" a one-half interest in the business, the court resorted to a formalistic test which was emphatically rejected in *Tower* and *Lusthaus*.[6] This Court's holding in

[5] Besides, even assuming that taxpayer's expectancy of new capital from the sons sufficed to make them immediate partners, nothing in the record or the Tax Court's findings warrants the appellate court's tacit assumption that the sons intended to contribute any new capital; on the contrary, as appears from its own restatement of the facts (R. 182-183), the sons' admission as partners was based on taxpayer's "sale" to them of an interest in the existing business assets.

[6] The court noted (R. 183), as the Tax Court had found, that taxpayer purchased and paid for Coon's interest in the business, that he in turn "sold" that interest to his sons, and that the note he took from the sons as payment was satisfied partly by gift from him and partly out of the business proceeds.

those cases that the incoming partner must actually contribute capital "originating" with him (or else "vital additional services") would be meaningless if, as the court below assumed, transfer of bare legal title to some of the capital suffices to make the transferee a genuine partner.

(c) Insofar as it proceeded on the theory (R. 185, 186-187) that the sons' military services rendered them partners, the court dispensed with the alternative requirement of "vital additional services." Granting *arguendo* that one who has already become a partner in the tax sense does not cease to be one if his services to the business are interrupted by service to his country, no such situation is here presented. At the time the sons purportedly became partners, three of them were still attending school; their education—not any vital services to the business—was interrupted by the war. As for the eldest son, he performed the same non-vital services before and after his admission as a partner, and it was not until after the taxable years that he entered military service. (R. 44, 49-50, 96.)[7] The decision of the court below with respect to the younger sons is nothing short of a holding that any youth attending school who contributes non-vital services to his father's business and plans

[7] In its opinion (R. 183), the court acknowledged that the sons' services "when they were not in school was disrupted by the War" and that at the time of the Tax Court hearing two of them "were still in school." Taxpayer testified (R. 126) that during the taxable years "all of the boys were in school except W. O. Jr."

to contribute vital services after his education is completed, must forthwith be deemed a partner in the business if his education is disrupted by war service. Its decision with respect to the eldest son is tantamount to a holding that non-vital services are transformed into vital services by virtue of subsequent war service. Surely war service cannot create a real partnership for tax purposes where none existed before. Where, as here, the claimed partners never contributed either new capital or vital additional services to the business, their military service furnishes no tenable basis for treating part of the business income as earned by, and taxable to, them.

(d) Insofar as it held (R. 185, 187) that the arrangement must be accorded tax effect because it was not motivated by tax avoidance objectives,[8] the court again misconceived the rationale of the *Tower* and *Lusthaus* decisions. The tax consequences flow from the economic substance of the arrangement, irrespective of the underlying motives. The existence of a tax avoidance motive simply lends "further strength" (*Commissioner* v. *Tower,* p. 289) to the inference that the claimed partnership is unreal. See also *Helvering* v. *Clifford,* 309 U.S. 331, 333, 335.

(e) Finally, to the extent that its reversal of the Tax Court's decision rests upon its determination (R. 187) that "the evidence shows conclusively

[8] The Tax Court made no finding one way or the other on this score.

that the partnership here was actual, real, *bona fide*", the court below ignored the uncontradicted evidence which impelled the Tax Court to infer otherwise. The most that could be said in taxpayer's favor is that conflicting inferences as to the reality of the arrangement might reasonably be drawn. But "Whether the evidence would have supported a different finding by the Tax Court is a question not here presented." *Commissioner* v. *Tower*, p. 292.

3. The decision of the court below not only is in conflict with this Court's decisions in the *Tower* and *Lusthaus* cases, but reflects a marked departure from the approach taken by other Courts of Appeals [9] and the Fifth Circuit itself [10] in the

[9] See, e.g., Second Circuit: *Seifert* v. *Commissioner*, 157 F. 2d 719; *Seibert* v. *Commissioner*, 156 F. 2d 227; *Miller* v. *Commissioner*, 150 F. 2d 823; *Waldburger* v. *Helvering*, 131 F. 2d 598; *Fletcher* v. *Commissioner*, 164 F. 2d 182, certiorari denied, 333 U.S. 855. Third Circuit: *Eisenberg* v. *Commissioner*, 161 F. 2d 506, certiorari denied, 332 U.S. 767; *Davis* v. *Commissioner*, 161 F. 2d 361; *Walker* v. *Commissioner*, 160 F. 2d 313; *Lusthaus* v. *Commissioner*, 149 F. 2d 232, affirmed, 327 U.S. 293; *Sweigard* v. *Commissioner*, 149 F. 2d 646. Fourth Circuit: *Wilson* v. *Commissioner*, 161 F. 2d 556, certiorari denied, 332 U.S. 769; *Mauldin* v. *Commissioner*, 155 F. 2d 666; *Hash* v. *Commissioner*, 152 F. 2d 722, certiorari denied, 328 U.S. 838, rehearing denied, 328 U.S. 879; *Economos* v. *Commissioner*, 167 F. 2d 165, petition for certiorari filed August 6, 1948. Sixth Circuit: *Hougland* v. *Commissioner*, 166 F. 2d 815, certiorari denied, 334 U.S. 846; *Dawson* v. *Commissioner*, 163 F. 2d 664; *Lowry* v. *Commissioner*, 154

[10] *Scherf* v. *Commissioner*, 161 F. 2d 495, certiorari denied, 332 U.S. 810; *Benson* v. *Commissioner*, 161 F. 2d 821; *Belcher*

direct wake of, and even prior to, this Court's *Tower* and *Lusthaus* decisions. If permitted to stand, it will encourage taxpayers' appeals in other family partnership cases, add new impetus to the more recent trend of appellate court reversals of the Tax Court's decisions in such cases, and seriously undermine this Court's decisions in the *Tower* and *Lusthaus* cases.

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F. 2d 448, certiorari denied, 329 U.S. 725; *Lorenz* v. *Commissioner*, 148 F. 2d 527, certiorari denied, 327 U.S. 786; *Thorrez* v. *Commissioner*, 155 F. 2d 791; *Camfield* v. *Commissioner*, 154 F. 2d 1016; *Livie* v. *Commissioner*, 155 F. 2d 728; *Ewing* v. *Commissioner*, 157 F. 2d 679; *DeKorse* v. *Commissioner*, 158 F. 2d 801; *Greenberg* v. *Commissioner*, 158 F. 2d 800; *Schreiber* v. *Commissioner*, 160 F. 2d 108; *MacDonald* v. *Commissioner*, 165 F. 2d 213; *Epps* v. *Commissioner*, 164 F. 2d 482; cf. *Weinstein* v. *Commissioner*, 166 F. 2d 81. Seventh Circuit: *Appel* v. *Smith*, 161 F. 2d 121; *Tinkoff* v. *Commissioner*, 120 F. 2d 564. Eighth Circuit: *Doll* v. *Commissioner*, 149 F. 2d 239, certiorari denied, 326 U.S. 725; *Suporniek* v. *Commissioner*, 150 F. 2d 119; *Tyson* v. *Commissioner*, 146 F. 2d 50. Ninth Circuit: *Nordling* v. *Commissioner*, 166 F. 2d 703, petition for certiorari filed June 18, 1948; *Quon* v. *Commissioner*, 165 F. 2d 215, certiorari denied, 334 U.S. 845. Tenth Circuit; *Earp* v. *Jones*, 131 F. 2d 292, certiorari denied, 318 U.S. 764; *Grant* v. *Commissioner*, 150 F. 2d 915; *Bradshaw* v. *Commissioner*, 150 F. 2d 918; *Losh* v. *Commissioner*, 145 F. 2d 456.

v. *Commissioner*, 162 F. 2d 974, certiorari denied, 332 U.S. 824; *Mead* v. *Commissioner*, 131 F. 2d 323, certiorari denied, 318 U.S. 777; *Argo* v. *Commissioner*, 150 F. 2d 67, certiorari denied, 326 U.S. 762; *Sewell's Estate* v. *Commissioner*, 151 F. 2d 806, certiorari denied, 327 U.S. 805; *Sewell* v. *Commissioner*, 151 F. 2d 765, certiorari denied, 327 U.S. 783; *Dawes* v. *Allen*, 157 F. 2d 518; *Blalock* v. *Allen*, 151 F. 2d 927; *Morton* v. *Thomas*, 158 F. 2d 574, certiorari denied, 330 U.S. 834.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

PHILIP B. PERLMAN,
*Solicitor General.*

SEPTEMBER, 1948

# APPENDIX

**Internal Revenue Code:**

SEC. 11. NORMAL TAX ON INDIVIDUALS.

There shall be levied, collected, and paid for each taxable year upon the net income of every individual a * * * tax * * *.
(26 U. S. C. 1946 ed., Sec. 11.)

SEC. 22. GROSS INCOME.

(a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service * * *, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *
(26 U. S. C. 1946 ed., Sec. 22.)

SEC. 181. PARTNERSHIP NOT TAXABLE.

Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity.
(26 U.S.C. 1946 ed., Sec. 181.)

SEC. 182. TAX OF PARTNERS.

In computing the net income of each partner, he shall include, whether or not distribution is made to him—

* * * * *

(c) His distributive share of the ordinary net income or the ordinary net loss of the partnership, computed as provided in section 183 (b).
(26 U. S. C. 1946 ed., Sec. 182.)

SEC. 3797. DEFINITIONS.

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

* * * * *

(2) *Partnership and Partner.*—The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

* * * * *

(26 U. S. C. 1946 ed., Sec. 3797.)

**Treasury Regulations 103,** promulgated under the Internal Revenue Code:

SEC. 19.22 (a)-1. *What included in gross income.*—Gross income includes in general compensation for personal and professional services, business income, profits from sales of and dealings in property, interest, rent, dividends, and gains, profits, and income derived from any source whatever, unless exempt from tax by law. (See sections 22 (b) and 116.) In general, income is the gain derived from capital, from labor, or from both combined, * * *.